

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Request for Clarification of Clerical Changes	)	
and for Direction to USAC	)	

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

General Communication Inc. (GCI) has requested a fundamental change in the distribution of high cost support to rural carriers, asking the Wireline Competition Bureau to direct the Universal Service Administration Corporation (USAC) to:

Instruct USAC that the FCC has not modified certain provisions of the Fourth Order on Reconsideration in CC Docket 96-45, 13 FCC Rcd 5418, in which the FCC expressly ordered that when a CETC captures an ILEC subscriber and serves that subscriber entirely using the CETC's own, non-UNE, facilities, the incumbent LEC no longer receives the universal services support attributable to that customer.<sup>1</sup>

The United States Telecom Association (USTelecom)<sup>2</sup> submits that GCI's request is procedurally improper, fundamentally inconsistent with the public interest, and a distraction from the important Commission priorities of reforming the universal service contribution methodology and the intercarrier compensation systems.<sup>3</sup>

---

<sup>1</sup> Letter dated June 9, 2005 from John T. Nakahata, Counsel for GCI, to Thomas Navin, Chief, Wireline Competition Bureau, regarding *Request for Clarification of Clerical Changes and for Direction to USAC, CC Docket 96-45*.

<sup>2</sup> USTelecom is the Nation's oldest trade organization for the local exchange carrier industry. USTelecom's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>3</sup> USTelecom also joins in the submission of comments filed by the Independent Telephone and

*The time for review has passed, and the rule in practice is clear and predictable.* GCI has cloaked what would be a monumental and, for many communities, a possibly catastrophic change in rural high cost support in a seemingly minor, even innocuous, “request for clarification” by the Wireline Competition Bureau. The rule that supposedly needs clarification is 47 CFR § 54.307, which was modified over five years ago and, critically for GCI’s request, it has been applied in the way about which GCI complains ever since. During those five years, the entire industry has understood the application of the rule, so there is no need for “clarification.”

Not only is clarification unnecessary, the time has long passed for GCI to raise its concerns regarding Rule 54.307 as it is currently written. GCI’s request for clarification was filed over a year after the *last* of the chain of events to which it refers (June 22, 2004). Therefore, it appears that GCI has already waived any right to appeal anything the Commission has done in this matter. Accordingly, the Commission should not afford GCI the equivalent to unavailable appellate relief by granting its request for clarification.

As a practical matter, GCI actually is seeking a modification of Commission rules without filing a proper petition for rulemaking. In any meaningful sense, the rule is clear—when a rural incumbent LEC loses customers, the cost of its network remains fully supported. This is the rule, and GCI is asking for the rule to be *changed* not clarified. Moreover, GCI is asking for this rule to be changed by the Wireline Competition Bureau on delegated authority, which does not comport with the administrative law principles that govern Commission decision making. Therefore, GCI’s request should be denied, and GCI can file a petition for rulemaking if it likes.

---

Telecommunications Alliance, National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, United States Telecom Association, and Western Telecommunications Alliance. USTelecom fully concurs in those comments, and offers these comments as additional support for denying GCI’s request.

*The universal service rule at issue is fundamental to the principle of supporting networks used to meet carrier-of-last-resort obligations.* Universal service support should be used to help recover the cost of networks, not lines or services. This core principle ensures the continued availability of the networks that are necessary to bring connectivity to high-cost areas. It has always been at the heart of universal service, and the Commission should not, indeed, cannot in the public interest, change it without full and careful consideration. In fact, there is no equitable justification for changing the application of the rule now. The only equitable outcome is to recognize widespread industry reliance on current practice, and not to fundamentally alter it in the manner requested by GCI.

When a carrier of last resort loses a customer, it does not lose most of the cost of providing service to that customer. Instead, the network and its associated costs remain, as does the obligation to provide service. The affordability of that service is ensured through high-cost support, which is particularly significant as most of the affected carriers are subject to rate-of-return regulation guaranteeing them the opportunity to recover the costs of their networks in return for limiting the extent to which they have been able and continue to be able to profit from their investments. If the total amount of high cost support to these carriers of last resort were to decline significantly in response to GCI's request, as seems likely in some cases, affordable and universal service for all subscribers served by the carrier of last resort would be jeopardized.

*The public interest would be disserved by making major changes to rural high-cost support before fundamental reform of contribution methodology and intercarrier compensation.* The Commission is considering both fundamental intercarrier compensation reform and large-scale reform of the high cost contribution methodology. Moreover, Congress is considering major legislation in the area. In the middle of this critical period, GCI has created a distraction

August 17, 2005

that would further destabilize universal service support rather than facilitate the vital tasks of ensuring that universal service support and intercarrier compensation are sustainable.

If the Commission is concerned about legal support for current practice, it should not grant GCI's request in any event. Rather, the only action consistent with the public interest would be for the Commission to direct USAC to preserve the status quo by continuing to provide full universal service support for the cost of rural ILEC networks.

*Conclusion.* GCI's request for clarification and direction to USAC is untimely and procedurally infirm as it is a petition for rulemaking in disguise. It threatens the fundamental principle that high-cost support should preserve the networks of carriers of last resort so that they may provide affordable service to their customers. Finally, GCI's request distracts from the Commission's priorities of stabilizing universal service support while enacting fundamental contribution and intercarrier compensation reform. GCI's request should be denied, and the Commission should affirm USAC's current distribution of support pursuant to Rule 54.307.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

By: 

Its Attorneys:

James W. Olson  
Indra Sehdev Chalk  
Jeffrey S. Lanning  
Robin E. Tuttle

607 14<sup>th</sup> Street, NW, Suite 400  
Washington, DC 20005-2164  
(202) 326-7300

August 17, 2005